

## **Chief Justice Francis M. McDonald, Jr.<sup>1</sup>**

The Honorable Francis M. McDonald, Jr., died on October 8, 2018, after a short illness. He was the son of the late Attorney Francis and Margaret Kelly McDonald of Waterbury, and one of their eight children. His parents believed in education and numbered among their children a teacher, lawyers, an entomologist, and several who made careers in information technology from its infancy to the present day.

Justice McDonald is survived by his beloved wife, Mary Margaret McDonald, Ed.D.; son, Michael; daughter, Professor Mary Ann McDonald Carolan; son, Attorney John K. McDonald; seven grandchildren; and a sister and brothers.

Justice McDonald sometimes recalled William Shakespeare's in "The Seven Ages of Man" image of the reluctant schoolboy in his "smiling morning face" creeping like an unwilling snail to school. The bard began that piece, "one man in his time plays many parts . . . ." Justice McDonald, too, in his time played many parts—son, brother, husband, father, grandfather, friend, Supreme Court chief justice, great trial lawyer, private practitioner, and state's attorney, experienced trial court judge, fisherman, downhill skier, naturalist.

Like his father and younger brother, Dan, Justice McDonald attended College of the Holy Cross and Yale Law School. He became a member of the Connecticut Bar in 1956, and an agent of the Federal Bureau of Investigation, serving in Kansas City. He practiced law in Waterbury. He then served as an assistant United States attorney for the District of Connecticut under United States Attorney Simon S. Cohen. He then became deputy chief prosecutor for the Connecticut Circuit Court under Statewide Chief

---

<sup>1</sup>Remembrance by former Chief Appellate Court Judge Joseph P. Flynn.

Prosecutor Arnold Markle.

Justice McDonald was appointed the state's attorney for the judicial district of Waterbury in 1968, where he served for sixteen years. As state's attorney, his prosecutions often incorporated scientific testimony and evidence.

Before his appointment to the Superior Court by Governor William A. O'Neill in 1983, Justice McDonald was one of Connecticut's preeminent trial lawyers in the last half of the twentieth century. As state's attorney, Justice McDonald prosecuted numerous, complex homicides, including the murder of Wanda Avcollie, the Purolator armored vehicle triple murder and \$1.8 million robbery, the double murder of Irving and Rhoda Pasternak, and the prosecution of Lorne J. Acquin for the murders of his foster brother's wife, her seven children, and her niece. Justice McDonald tried cases against opponents such as William M. Kunstler, Louis Nizer, Michael J. Daly III, Raymond J. Quinn, and Theodore I. Koskoff. As to all of his courtroom opponents, whether nationally known or not, he had no animus toward any of them after the fray of battle ended.

In Nizer's book, "Catspaw," Nizer recounted how he had won a new trial for his client by convincing the Connecticut Supreme Court to change one of its rules of evidence concerning admissions against penal interest. His elation was diminished when he discovered that Justice McDonald had then obtained a court order to exhume the body of a third party to obtain further evidence for the new trial. Nizer wrote, "[w]e underestimated Francis McDonald."

Governor John G. Rowland appointed Justice McDonald to the Connecticut Supreme Court as an associate justice in 1996, and then as chief justice in 1999, when

he succeeded Robert J. Callahan.

Justice McDonald's long experience had taught him that the families of victims suffered even more when justice was delayed. Shortly after he was appointed and confirmed as chief justice, Justice McDonald learned that 237 murder cases were pending in the Superior Court. He was also concerned that there were then almost 1300 serious felony cases awaiting trial, some for years. In Hartford alone, there were 52 pending murder cases and 21 capital felony cases. On his order, judges were reassigned, courtrooms were prepared, and this backlog was addressed.

Justice McDonald grew up in the Bunker Hill neighborhood of Waterbury, graduating from Crosby High School when it regularly sent its students to some of the major colleges and universities of the United States. The city's prosperous Grand Street was graced by several buildings designed by Cass Gilbert of the New York based architectural firm of McKim, Mead and White. The saw-toothed roofs of the city's factories housed the rolling mills, muffles, shears, annealing furnaces, pickle tubs, extruders, and slitters of its brass industry, where thousands were employed. Brass found its way into Waterbury's Latin motto, "Quid Aere Perennius," meaning "what is more lasting than brass?," which was taken from Horace's poem, "Ars Poetica." This motto proved prescient, as Waterbury's brass production ceased in Justice McDonald's last years. Like Horace, who wrote in "Ars Poetica" that his literary efforts would outlast the monuments of marble and brass erected by his fellow Romans, Justice McDonald's opinions have survived. Like a pebble tossed into a quiet pond, one such dissenting opinion had rippling consequences. Justice McDonald believed strongly that no one should be convicted of a crime when the evidence did not establish each and every

element of the crime charged beyond a reasonable doubt. When the evidence could not support a conviction, he was eloquent in dissent. The dissent can be found in *State v. Miranda* (260 Conn. 93), a case in which the Connecticut Supreme Court considered the conviction of a defendant charged with assault of a four month old child who had suffered severe, nonaccidental physical injuries. The Appellate Court previously had reversed the first degree assault conviction of the defendant, Santos Miranda, who was not the parent or legal guardian of the child but was the live-in boyfriend of the child's mother. The Appellate Court held that the "failure to act when one is under no legal duty to do so, thereby permitting a dangerous condition to exist, [was] not sufficient to support [Miranda's] conviction [of] assault in the first degree . . . ." The Supreme Court reversed, holding that Miranda nonetheless had a duty to act to prevent injury to the child and that his omission to do so was sufficient to sustain his conviction of first degree assault. Justice McDonald, dissenting in part, noted that the majority was "extend[ing] criminal liability beyond the traditional boundaries" to include an omission to act to protect a child when "some other person may [have] independently decide[d] to cause, and [did] cause, serious physical injury."

Ultimately, however, the Supreme Court came to agree with Justice McDonald. In a subsequent per curiam opinion, the court reversed its earlier conclusion that Miranda could be convicted of assault in the first degree. *State v. Miranda* (272 Conn. 430).

Justice McDonald respected the role of the people in our government. He strongly believed that, when courts declare public policy unmoored to constitution or statute, there is danger that the democratic mandate that otherwise justifies, underlies,

and ensures acceptance will be lost.

For all of his professional achievements, Justice McDonald did not boast or talk about them. We remember his human qualities. He was considerate of others, whether opposing counsel, lawyers who appeared before him, or anyone else whom he met. In a Connecticut Law Tribune article written after Justice McDonald's death, Robert Storace wrote of him: "[He was] [k]nown in the state's legal circles as an outspoken, witty and compassionate jurist . . . ."

Justice McDonald was unassuming, outgoing, and met people easily. Like Alfred, Lord Tennyson's Ulysses, Justice McDonald was part of all that he had met. He once encountered another judge's clerk for the first time. He greeted the clerk by saying, "you look down." The young clerk replied that he was disconsolate because of a breakup with his girlfriend. After hearing more details, Justice McDonald suggested that he send her flowers or a box of chocolates. When told that had already been tried, he then suggested certain things that should be said in a letter. The advice was taken. Years have passed. The couple is now happily married with children.

Another law clerk, who assisted Justice McDonald when he was a referee on the Appellate Court, recalled that he had stopped at her desk to thank her. She still keeps framed something that he wrote as a preface to the curriculum for judicial education seminars when he was the chief justice: "[F]reedom often depends upon the fearless judge. Judicial independence has a long history in Connecticut, where the British colonists rebelled because judges were beholden to King George III. The evils done by puppet judges directed by tyrants such as [Adolf] Hitler and [Joseph] Stalin resulted in the wholesale slaughter of countless innocent people. History teaches that we must

resist that evil."

Frank was active for all of his eighty-seven years. He was not as tall as his lanky father or brothers, but he was strong and wiry. He skied, snowshoed, could manage his boat alone, and gardened. Frank respected and valued all life, in all its forms, whether it be the colorfully plumed and injured kestrel he rescued from one of his shrubs, the stippled colored trout he regularly caught and released, the chipmunks that competed for his tomatoes, the green fields and treed countryside assembled by his grandfather in Middlebury, or two-year old Brittany, who received a grandfatherly hug after she spoke out at his 2001 Supreme Court retirement ceremony.

He fished the streams and lakes of New York and New England. He tied and popularized a mylar fly mimicking an alewife that became known among lake fishermen as the "Justice McDonald." One of his last fishing outings was in the fall of 2018 on Middlebury's Lake Quassapaug with Bob Gregorski, an outdoorsman and writer. When spring came in 2019, the morning sun still shone over the brow of the Whittemore hill, but Frank was missed on Lake Quassapaug.

Requiescat in pace.